

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Isaac Forman	Team: APU	CCRB Case #: 201809746	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 10/28/2018 8:18 PM	Location of Incident: 875 Avenue of the Americas; During transport; On social media	Precinct: 14	18 Mo. SOL 4/28/2020	EO SOL 12/13/2020	
Date/Time CV Reported Wed, 11/21/2018 4:24 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 11/21/2018 4:24 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Brendan Oseback	08047	956994	MTS PCT
2. POM Nicolas Morris	04054	964669	MTS PCT
3. POM Brett Meritzsaccante	28117	950880	MTS PCT
4. An officer			MTS PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Robert Sallie	16793	961230	MTS PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brendan Oseback	Abuse: On October 28, 2018, at 875 Avenue of the Americas, Police Officer Brendan Oseback questioned § 87(2)(b)	
B.POM Brendan Oseback	Abuse: On October 28, 2018, at 875 Avenue of the Americas, Police Officer Brendan Oseback searched § 87(2)(b)	
C.POM Brendan Oseback	Abuse: On October 28, 2018, en route to the 7th Precinct Stationhouse, Police Officer Brendan Oseback made a sexually suggestive remark to § 87(2)(b)	
D.POM Brendan Oseback	Abuse: On October 28, 2018, en route to the 7th Precinct Stationhouse, Police Officer Brendan Oseback searched § 87(2)(b) s recording device.	
E.POM Nicolas Morris	Abuse: On October 28, 2018, en route to the 7th Precinct Stationhouse, Police Officer Nicolas Morris made a sexually suggestive remark to § 87(2)(b)	
F.POM Brett Meritzsaccante	Abuse: On October 29, 2018, en route to Manhattan Central Booking, Police Officer Brett Meritzsaccante made a sexually suggestive remark to § 87(2)(b)	
G. An officer	Abuse: On an unknown date, at an unknown location, an officer searched § 87(2)(b) s recording device.	

Officer(s)	Allegation	Investigator Recommendation
H.POM Nicolas Morris	Abuse: On October 29, 2018, on Social Media, Police Officer Nicolas Morris propositioned § 87(2)(b)	
I.POM Nicolas Morris	Abuse: On October 29, 2018, on Social Media, Police Officer Nicolas Morris propositioned an individual.	
J.POM Nicolas Morris	Abuse: On October 29, 2018, on Social Media, Police Officer Nicolas Morris made a sexually suggestive remark to § 87(2)(b)	

Case Summary

On November 21, 2018, § 87(2)(b) filed this complaint with the CCRB via the online website.

On October 28, 2018, at approximately 8:18pm, PO Brendan Oseback responded to a vehicle accident involving § 87(2)(b) in the vicinity of 875 Avenue of the Americas in Manhattan. § 87(2)(b) was with a friend, § 87(2)(b) and two women he had just met, § 87(2)(b) and § 87(2)(b). PO Oseback asked § 87(2)(b) if he had consumed any alcohol (**Allegation A: Abuse of Authority-§ 87(2)(g)**). PO Oseback then administered a breathalyzer test to § 87(2)(b) (**Allegation B: Abuse of Authority-§ 87(2)(g)**). § 87(2)(b) was then placed under arrest for DWI. While in the police vehicle, PO Oseback allegedly apologized to § 87(2)(b) for “cockblocking” him (**Allegation C: Abuse of Authority-§ 87(2)(g)**). § 87(2)(b) then asked PO Oseback to make a phone call from his phone, which PO Oseback allegedly did (**Allegation D: Abuse of Authority-§ 87(2)(g)**). While in the police vehicle, PO Nicolas Morris described § 87(2)(b) and § 87(2)(b) as “hot” while speaking to § 87(2)(b) (**Allegation E: Abuse of Authority-§ 87(2)(g)**). § 87(2)(b) was later transported to § 87(2)(b) for chest pain. While he was being transported from the hospital to Central Bookings, PO Brett Meritzsaccante allegedly described § 87(2)(b) and § 87(2)(b) as “sexy,” “hot,” and “smoking” (**Allegation F: Abuse of Authority-§ 87(2)(g)**). § 87(2)(b) believed that, while he was in custody, an unidentified officer accessed his phone and obtained the womens’ § 87(2)(b) information (**Allegation G: Abuse of Authority-§ 87(2)(g)**). He suspected this because PO Morris followed both § 87(2)(b) and § 87(2)(b) on § 87(2)(b) and messaged § 87(2)(b) (**Allegations H and I: Abuse of Authority-§ 87(2)(g)**). PO Morris also allegedly messaged § 87(2)(b) stating “How are you beautiful?” (**Allegation J: Abuse of Authority-§ 87(2)(g)**).

No video footage of this incident was identified.

Findings and Recommendations

Allegation (A) Abuse of Authority: On October 28, 2018, at 875 Avenue of the Americas, Police Officer Brendan Oseback questioned § 87(2)(b)

Allegation (B) Abuse of Authority: On October 28, 2018, at 875 Avenue of the Americas, Police Officer Brendan Oseback searched § 87(2)(b)

§ 87(2)(b) testified that approximately one hour prior to this incident, he consumed three glasses of champagne and two to three shots of tequila. He did not feel intoxicated while driving. § 87(2)(b) and § 87(2)(b) were passengers in his car. While driving, he became distracted and ran into the back of another vehicle. After a brief interaction with the other driver, § 87(2)(b) flagged down PO Oseback who was on foot nearby. PO Oseback asked what had happened and asked § 87(2)(b) if he had had anything to drink. § 87(2)(b) informed PO Oseback that he had consumed three drinks. PO Oseback then administered a breathalyzer test. § 87(2)(b) blew a .12. PO Oseback administered a second breathalyzer test 20 minutes later and § 87(2)(b) blew a .11 (Board Review 01).

Intoxicated Driver Examination § 87(2)(b) was prepared for § 87(2)(b) at the 7th Precinct by PO Matthew Morales. It lists § 87(2)(b) breath as moderately smelling of alcohol, his eyes as watery and bloodshot, his balance as steady, and his speech as slurred (Board Review 02).

PO Oseback testified that he was on a footpost by himself when he was flagged down in regards to an auto accident involving § 87(2)(b) and § 87(2)(b). PO Oseback testified that, after briefly speaking to § 87(2)(b) about the accident, he suspected that § 87(2)(b) was intoxicated. He suspected this because § 87(2)(b) smelled of alcohol. PO Oseback asked § 87(2)(b) if he had had any drinks. PO Oseback testified that he asked this question because of his suspicion that § 87(2)(b) was intoxicated. § 87(2)(b) replied that he had had three drinks. PO Oseback began a 20 minute observation period, as procedure requires prior to administering a breathalyzer test. PO Oseback administered the breathalyzer test on § 87(2)(b). He did so because § 87(2)(b) smelled of alcohol and had stated he had had three drinks prior to the accident. § 87(2)(b) blew a .12. PO Oseback waited another 20 minutes before administering another test to ensure that it was not a false positive. The second time, § 87(2)(b) blew a .11 (Board Review 03).

Officers may ask pointed questions when they have a founded suspicion that criminality may be afoot. People v. DeBour, 40 N.Y.2d 210 (1976) (Board Review 04). Every person operating a motor vehicle in New York State shall be deemed to have given consent to a chemical test of one or more of the following: breath, blood, urine, or saliva, for the purpose of determining the alcoholic content of the blood provided that such test is administered by or at the direction of a police officer having reasonable grounds to believe that such person to have been operating a vehicle under the influence of alcohol within two hours after the stop of such person for any such violation. Vehicle and Traffic Law §1194 (Board Review 05).

§ 87(2)(b) acknowledged consuming approximately five to six alcoholic beverages approximately one hour prior to this incident. Further, PO Oseback's observations of § 87(2)(b) was consistent with those noted in the later paperwork. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: On October 28, 2018, en route to the 7th Precinct Stationhouse, Police Officer Brendan Oseback made a sexually suggestive remark to § 87(2)(b)

§ 87(2)(b) testified that after he was handcuffed, he was placed into a marked police vehicle. PO Oseback was in the rear of the vehicle with him. PO Morris was the driver and an officer, identified as PO Sallie, was seated in the front passenger seat. Once he was inside the vehicle, PO Oseback told § 87(2)(b) that he was sorry for "cockblocking" him (Board Review 01).

PO Oseback testified that after he placed § 87(2)(b) under arrest, he put him in a transport unit that responded to the location. In the vehicle, PO Oseback could not recall any discussion of the women that were on scene with § 87(2)(b). PO Oseback did not recall apologizing to § 87(2)(b) for "cockblocking" him (Board Review 03).

Neither PO Morris nor PO Sallie recalled hearing PO Oseback apologize to § 87(2)(b) for "cockblocking" him (Board Review 06, 07).

§ 87(2)(g)

Allegation (D) Abuse of Authority: On October 28, 2018, en route to the 7th Precinct Stationhouse, Police Officer Brendan Oseback searched § 87(2)(b)'s recording device.

§ 87(2)(b) testified that, while in the police vehicle, he asked PO Oseback to make a phone call for him on § 87(2)(b) cellphone. PO Oseback had retrieved § 87(2)(b) phone from his after placing him into handcuffs. § 87(2)(b) explained to PO Oseback that he had cash in the vehicle from the restaurant he works at. He wanted § 87(2)(b) to retrieve it from the vehicle. § 87(2)(b) provided the passcode for his phone to PO Oseback so that he could make the phone call. PO Oseback called § 87(2)(b) and relayed § 87(2)(b) request that he retrieve the cash (Board Review 01).

PO Oseback testified that § 87(2)(b) mentioned having cash in his vehicle. PO Oseback permitted § 87(2)(b) to retrieve the cash from the vehicle for § 87(2)(b). PO Oseback denied making a phone call on § 87(2)(b) phone. He also denied § 87(2)(b) providing him with the passcode to the phone. PO Oseback testified that he vouchered § 87(2)(b) phone (Board Review 03).

Neither PO Sallie nor PO Morris could recall PO Oseback making any phone calls on § 87(2)(b) phone. Neither recalled any mention of cash in § 87(2)(b) vehicle. In addition, neither recalled § 87(2)(b) providing PO Oseback, or any other officer, with the passcode to his phone (Board Review 06, 07).

Consent to search is voluntary when it is a true act of the will, an unequivocal product of an essentially free and unconstrained choice. People v. Gonzalez, 39 N.Y.2d 122 (1976) (Board Review 08).

While PO Oseback denied making a phone call on § 87(2)(b) phone, § 87(2)(b) testified that he requested such and that he provided the passcode for his phone. § 87(2)(g)

Allegation (E) Abuse of Authority: On October 28, 2018, en route to the 7th Precinct Stationhouse, Police Officer Nicolas Morris made a sexually suggestive remark to § 87(2)(b).

Allegation (F) Abuse of Authority: On October 29, 2018, en route to Manhattan Central Booking, Police Officer Brett Meritzsaccante made a sexually suggestive remark to § 87(2)(b).

Allegation (G) Abuse of Authority: On an unknown date, at an unknown location, an officer searched § 87(2)(b)'s recording device.

Allegation (H) Abuse of Authority: On October 29, 2018, on Social Media, Police Officer Nicolas Morris propositioned § 87(2)(b).

Allegation (I) Abuse of Authority: On October 29, 2018, on Social Media, Police Officer Nicolas Morris propositioned an individual.

Allegation (J) Abuse of Authority: On October 29, 2018, on Social Media, Police Officer Nicolas Morris made a sexually suggestive remark to § 87(2)(b).

§ 87(2)(b) testified that after the phone call was completed, PO Morris began asking about the females that § 87(2)(b) was with. Specifically, PO Morris asked about the women's § 87(2)(b). § 87(2)(b) told PO Morris that he did not know the women's § 87(2)(b) handles, but provided their first names as § 87(2)(b) and § 87(2)(b). He told PO Morris that § 87(2)(b) was an § 87(2)(b) and that if he searched her name, it would come up. § 87(2)(b) also told PO Morris that if he wanted, they could look the women up on his phone. PO Oseback told him no and told PO Morris that they would get in trouble if he did so. § 87(2)(b) was later transported to the hospital for chest pains. While he was being driven from the hospital to Manhattan Central Booking, an officer, identified by the investigation as PO Brett Meritzsaccante, was talking about the women. PO Meritzsaccante described them as "hot," "sexy," and "smoking." After being released from police custody, § 87(2)(b) informed § 87(2)(b) that PO Morris had followed both her and § 87(2)(b) on § 87(2)(b). In addition, § 87(2)(b) shared a screenshot of an § 87(2)(b) direct message conversation between § 87(2)(b) and PO Morris. § 87(2)(b) testified that he believed an officer went onto his phone and obtained the women's § 87(2)(b) names because he did not know how else PO Morris would have obtained that information (Board Review 01).

§ 87(2)(b) provided a telephone statement in Spanish in regards to this incident. She stated that the day after the accident, she and § 87(2)(b), received messages in their § 87(2)(b) inboxes from PO Morris. PO Morris messaged § 87(2)(b) "How are you beautiful?" She replied asking whether he was the officer from the prior day. He confirmed he was and she did not reply. § 87(2)(b) did not provide the investigation with screenshots of this conversation. § 87(2)(b) stated that § 87(2)(b) continued to converse with PO Morris (Board Review 09).

PO Morris' § 87(2)(b) conversation with § 87(2)(b) was provided to the investigation by § 87(2)(b). He received it from § 87(2)(b) who received it from § 87(2)(b) (Board Review 10).

PO Morris testified that, while he, the other officers, and § 87(2)(b) were waiting for the breathalyzer test to be administered, he chatted with § 87(2)(b) and § 87(2)(b). He could not recall what they talked about. He denied getting the women's names. Once the officers placed § 87(2)(b) into PO Morris' marked police vehicle, § 87(2)(b) began speaking about the women. He brought up how beautiful they were and said he had just met them at a bar. PO Morris agreed that they were beautiful, stating that they were "hot." After IDTU testing at the 7th Precinct, PO Morris rode with PO Oseback, PO Sallie, and § 87(2)(b) to the Midtown South stationhouse. While they were driving there, § 87(2)(b) brought up the women again and told the officers to add them on § 87(2)(b). He provided their names and PO Morris searched § 87(2)(b)s. PO Morris then followed § 87(2)(b) on § 87(2)(b). Via a photo on § 87(2)(b)s page, PO Morris found § 87(2)(b)'s page. He then added her. He testified that doing so served no law enforcement purpose. PO Morris denied ever being in possession of § 87(2)(b) phone and denied searching it to obtain the women's names. He testified that the following day, § 87(2)(b) messaged him on § 87(2)(b). She asked him if he was the officer from the day prior. He confirmed he was and they continued to converse. They made plans to get together to dance though never followed through on it. Their communication lasted for approximately seven months. PO Morris testified that these communications served no law enforcement purpose. PO Morris was presented with the screenshot of his communications with § 87(2)(b). He confirmed that they were part of those communications. PO Morris denied contacting § 87(2)(b) on § 87(2)(b) and could not recall messaging her and calling her "beautiful" (Board Review 06).

PO Oseback testified that he could not recall any discussion of the women by § 87(2)(b) or the officers. He denied hearing any reference to § 87(2)(b) by either § 87(2)(b) or any officer. PO Oseback testified that, once they were at the Manhattan South stationhouse, § 87(2)(b) complained of chest pain and asked to go to the hospital. After a brief stay at the hospital, PO Oseback transported § 87(2)(b) to Manhattan Central Bookings. PO Oseback testified that someone from Manhattan South had to have picked them up to transport them as he did not have a vehicle with him. PO Oseback could not recall who picked up him, nor whether it was a marked or unmarked police vehicle. PO Oseback testified that there was no discussion of the women during this transport. He could not recall any officer describing the women as “hot,” “smoking,” or “sexy.” PO Oseback testified that he vouchered § 87(2)(b) cellphone. He denied going onto the cellphone and did not observe any other officer do so. PO Oseback testified that the following day, PO Morris informed PO Oseback that he had messaged one of the women on § 87(2)(b). PO Oseback did not know what he said nor how he obtained the woman’s name (Board Review 03).

PO Meritzsaccante testified that he responded to the location of this incident to provide PO Oseback with a breathalyzer test. He then remained on scene until § 87(2)(b) was transported. He did not know if there were female civilians on scene. PO Meritzsaccante had no recollection of transporting § 87(2)(b) from the hospital to Manhattan Central Booking. He testified that he did not know who the MOS or male was that he was noted as transporting from § 87(2)(b) to Central Booking in his memo book. He denied describing any females as “hot,” “sexy,” or “smoking” (Board Review 11).

Officers should be courteous and respectful. NYPD Patrol Guide, Procedure 203-09 (Board Review 12). Members of the service are prohibited from knowingly engaging in any type of social media contact (e.g., “friending,” “following,” etc.) with a suspect, witness, or crime victim if that officer was either involved in the incident, or the officer became acquainted with that victim or witness during or because of the incident and the matter is under investigation or pending in a criminal court. NYPD Patrol Guide, Procedure 203-28 (Board Review 13).

PO Morris acknowledged commenting to § 87(2)(b) about the attractiveness of § 87(2)(b) and § 87(2)(b) when he called them “hot.” § 87(2)(g)

§ 87(2)(g)

As § 87(2)(b) did not see any officer conduct a search of his phone and there is no evidence that indicates any specific officer may have done so, § 87(2)(g)

It is undisputed that PO Morris followed both § 87(2)(b) and § 87(2)(b) on § 87(2)(b) immediately after this incident, in violation of the above-noted Patrol Guide procedure. § 87(2)(b) Further shading PO Morris’ actions are his later messages to § 87(2)(b) where they discuss going out and dancing. § 87(2)(b)

§ 87(2)(g) [Redacted]
[Redacted]

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) [Redacted] has been a party (Board Review 14).
- This is the first CCRB complaint to which § 87(2)(b) [Redacted] has been a party (Board Review 15).
- This is the first CCRB complaint to which § 87(2)(b) [Redacted] has been a party (Board Review 16).
- PO Morris has been a member-of-service for one year and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g) [Redacted]
[Redacted]
- PO Oseback has been a member-of-service for four years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g) [Redacted]
[Redacted]
- PO Meritzsaccante has been a member-of-service for eight years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of April 15, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 17).
- § 87(2)(b) [Redacted]
[Redacted]

Squad No.: 1

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date